# GUEST EDITORIAL

# The search for crime money – debunking the myth: facts versus imagery

Jackie Harvey
*Newcastle Business School, Northumbria University, Newcastle, UK*

**Abstract**

**Purpose** – The purpose of this paper evolves from a seminar that look place in July 2008 aimed at uncovering the issues facing agencies tackling criminal money management and money laundering policy and compliance. The event brought representatives from financial firms and law enforcement agencies together to debate issues with academics.

**Design/methodology/approach** – The paper rehearses the main arguments arising from the seminar underpinned by appropriate literature prior to introducing the other papers included in the special edition.

**Findings** – The objective is to draw attention to the importance of establishing evidence-based building blocks of facts, rather than threats and imagery that should be used to inform policy makers.

**Practical implications** – Policy makers need to pay attention to the findings of objective empirical research and use theses to inform policy making.

**Originality/value** – The special edition is of value to academics and policy makers, bringing together, as it does, research that is taking place across Europe.

**Keywords** Crimes, Money laundering, Laws and legislation

**Paper type** Conceptual paper

The approach to legislating for money laundering has been focussed on providing a widening arsenal of weapons for use by the law enforcement authorities, all the while justified by the righteous belief that criminal financial activity is occurring on a scale that is so vast as to threaten the functioning and integrity of the financial system. Indeed, it would appear that the bigger and more threatening the estimate, reinforced by the zealous assumption of its constant upward spiral (van Duyne *et al.*, 2005), the more likely it is to be adopted (van Duyne, 2003; Reuter and Truman, 2005; Levi and Reuter, 2006; Harvey, 2005; Harvey and Lau, 2008). Indeed there is a certain perverse logic in that smaller estimates would invalidate the presumption of threat. In essence, we have produced the perfect win-win situation for the many public and private sector agencies whose existence is justified by these underlying assumptions in what could be viewed as an elaborate "hustle", sheltered behind the symbolic imagery of anti-money laundering apparatus.

Official justification for anti-money laundering rests on the hypothesis that separating the criminal from the benefits of his lifestyle will reduce the attractiveness of his chosen occupation and that the imposition of regulation increases both the costs of laundering and the probability of detection and conviction. Such arguments continue to be presented despite increasing evidence that they do not hold in practice (Alldridge, 2003; van Duyne *et al.*, 2005; Reuter and Truman, 2005; Harvey and Lau, 2008). This approach is based on an untested a priori assumption of a positive inverse relationship between anti-money laundering legislation and predicate crime.

The recent and continued expansion of legislation which, at each turn, has widened the underlying definition of the phenomena (van Duyne, 2003; Harvey, 2005; Levi and Reuter, 2006; Sproat, 2007) contains no real analysis of the costs and benefits or of effectiveness of such measures. Indeed, over the period from 1990 when the Joint Money Laundering Steering Group produced its first guidance notes up until the introduction of the 2007 Money Laundering Regulations there have been 15 regulatory and legislative changes introduced. Each change in the law requires justification and there have been four government impact studies[1] in relation to anti-money laundering legislation that purport to apply cost/benefit principles. They make fascinating reading due not only to the fact that costs were and have been significantly underestimated, but also because such estimates were based on questionable data and assumptions. For example, the 1993 cost estimates appear to have been based on a survey of 1,000 institutions, however, only 60 responded, less than 10 commented on costs and only one attempted to quantify them! In addition, the impact assessments contain little in the way of quantification of any benefit but bland statements of the benefits accruing to institutions by way of reputation and to society as a whole by way of a reduction in criminal activity. Whilst it is perfectly in order for the authorities to anticipate and pre-empt criminal action that might have a detrimental impact on society, there is still the overarching requirement for prudence and appropriate and careful balancing of costs against benefits with each change in legislation.

And what of the impact on the regulated sector? It is argued that the banks, in particular, will be compliant with legislation and be willing to perform the consequent outreach services for law enforcement due to concern over reputation, certainly, but more probably due to their desire to avoid regulatory censure. The most recent UK mutual evaluation report (FATF, 2007) draws attention to the fact that over the period from 30 November 2001, the FSA's Enforcement Division had dealt with 18 cases, of which 14 resulted in enforcement actions, specifically related to anti-money laundering compliance. It is interesting, however, that the comment made is that "Having regard to the size of the UK's financial sector, the number of FSA disciplinary sanctions (since 2001) seem relatively low". Curiously, rather than congratulating UK on its apparent strong compliance, it is being criticised for failure to bring sanctions against more banks.

These points are emphatically brought out in the paper by Magnusson who presents an empirical analysis of the costs of implementing anti-money laundering regulation in Sweden, arguing that it is only against such facts that it is possible to evaluate the efficiency of the system. His detailed interviews shed light on the extensive range of quantifiable costs associated with compliance across the sector. Against this background, he then considered the evidence that money laundering is still continuing within the country providing examples of how criminals are able to circumvent the regulations. It appears that anxiety over criminal activity has given the government opportunity to issue more regulations and that these are complied with by the banks in order to provide protection, not against criminals, but against the authorities.

It is clear that banks have an inherent interest in preserving their reputation and it is this that is the cornerstone of integrity. Banks have to be able to safely and properly handle the funds entrusted to them by all of their customers and it is this that contributes to reputation, irrespective of where criminals maintain bank accounts. As money *per se* is neither clean nor criminal, the label of laundering becomes attached by association with something else that is perceived to be illegal. By definition, account monitoring cannot and will not be able to determine the distinction, a similar point being made by Favarel-Garrigues *et al.* (2008).

The work of Verhage adds depth to the debate through her analysis of one of the beneficences of the threatening spectre of criminal money, the booming anti-money laundering compliance sector in Belgium. She neatly draws attention to the fine line upon which compliances officers tread in balancing the goals of anti-money laundering against the commercial goals of the bank. From this it is apparent that significant justification rests with reputation protection against regulatory sanction, although, she suggests that the perception of the risk to reputation is higher than the actual risk. The results are the birth of compliance as a new profession and lingering questions over effectiveness.

Sproat builds on the threat related theme by focussing on the regulatory justification for anti money laundering and assets recovery emanating from organised criminal activity. He patiently picks his way through four different public datasets in an attempt to triangulate evidence on the use of law enforcement powers against organised criminals. His results suggest that the regime is not being used against organised criminal activity, either because it fails to apprehend these villains or because the scale of their activity has been exaggerated.

As criminals do not oblige us by keeping accounts of their activities, by its very nature, it is a far from easy task to determine the true scale of criminal money laundering and hence the potential threat to the financial system. Given such an evidence free area, it is beholden to academics to establish proper frameworks for analysis to understand the extent of money laundering and, explicitly to test these assumptions. Organised crime provides the focus to the contribution from Caneppele *et al.* who argue convincingly that whilst the emphasis of countermeasures has been on financial institutions, criminals have refined their laundering techniques to embrace those parts of the economy outside of the regulated sectors. Through a detailed analysis of the process of public procurement they propose, through careful assessment of data, a criminological model that identifies the specific variables that correlate to increased risk of infiltration by organised criminals.

Another source of evidence provided to researchers comes from the various national assets recovery agencies. These provide rich databases of the consumption and investment habits of the criminal fraternity as disclosed by van Duyne. He sets about an objective analysis of this data in order to quantify the threat emanating from criminal interest in the Dutch real estate market, *en route* exposing serious flaws in the integrity of the data. van Duyne, in addition to pointing out questionable taste on the part of criminals in their acquisition of goods and chattels, also points a challenging finger at the authorities to justify their threat rhetoric.

No study of criminal activity would be complete without attention to the financing of terrorism and this is provided by our final author, Tupman who provides an erudite discussion of the parallels between paramilitary and organised crime groups operating as business entities. He also grapples with the problems of verifying the objectivity and accuracy of data as he attempts to untangle the myths of counter terrorism policy making, particularly with reference to financing.

Each of these contributors have demonstrated the theoretical rigour that is required to lift at least a corner of the veils of ambiguity that cloud objective research in this area. In so doing, each is able to contribute towards the evidence-based building blocks of facts for it is these, rather than threats, myths and imagery that should inform our policy makers and soon, before the regulatory bandwagon moves to embrace the next money laundering directive.

## Note

1. In relation to the money laundering regulations 1993, 2001, 2003 and 2007.

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**Corresponding author**
Jackie Harvey can be contacted at: jackie.harvey@northumbria.ac.uk